

1 Paul L. Hoffman, SBN 71244
2 Catherine Sweetser, SBN 271142
3 Schonbrun Seplow
4 Harris & Hoffman LLP
5 723 Ocean Front Walk
6 Venice, California 90291
7 Telephone: (310) 396-0731
8 Fax: (310) 399-7040
9
10 Attorneys for Plaintiff
11 Nolan Lewis

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

NOLAN LEWIS, an individual,

Plaintiff,

v.

WILLIAM MOSSBROOKS, CHAD
JOY, MABEL DEA, DAVID
SHULKIN, in his official capacity as
Secretary of Veteran's Affairs; THE
DEPARTMENT OF VETERAN'S
AFFAIRS, a public entity AND DOES
1 - 10, and THE UNITED STATES
OF AMERICA

Defendants.

CASE NO: 15-cv-08756-JFW-Ex

**SECOND AMENDED
COMPLAINT**

FIRST CLAIM FOR RELIEF
VIOLATION OF THE PRIVACY
ACT

SECOND CLAIM FOR RELIEF
FOURTH AMENDMENT
VIOLATION: FALSE ARREST

THIRD CLAIM FOR RELIEF
FOURTH AMENDMENT
VIOLATION: UNREASONABLE
AND EXCESSIVE USE OF FORCE

FOURTH CLAIM FOR RELIEF
VIOLATION OF FOURTH AND
FIFTH AMENDMENT RIGHTS:
MALICIOUS PROSECUTION

FIFTH CLAIM FOR RELIEF
VIOLATION OF FIFTH
AMENDMENT RIGHTS: ABUSE OF
PROCESS

SIXTH CLAIM FOR RELIEF
[VIOLATION OF THE
REHABILITATION ACT OF 1973]

SEVENTH CLAIM FOR RELIEF
[CAL. CIVIL CODE §52.1]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EIGHTH CLAIM FOR RELIEF
[INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS]

NINTH CLAIM FOR RELIEF
[NEGLIGENCE]

TENTH CLAIM FOR RELIEF
[ASSAULT AND BATTERY]

ELEVENTH CLAIM FOR RELIEF
[FALSE ARREST AND
IMPRIONMENT]

TWELFTH CLAIM FOR RELIEF
[MALICIOUS
PROSECUTION/ABUSE OF
PROCESS]

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. This case involves wrongful detention, false arrest, excessive force,
3 malicious prosecution, discrimination and other wrongful and negligent acts
4 against Mr. Nolan Lewis ('Plaintiff') by agents and officials of the country he
5 served during the Vietnam War. Although the Veteran's Administration ("VA")
6 diagnosed Plaintiff as suffering from service-connected PTSD, the VA denied him
7 medical care for more than 30 years. In 2004, the VA classified Plaintiff 100
8 percent disabled due to service connected P.T.S.D arising from infantry combat
9 duty in Vietnam. From 2004 to 2011, Plaintiff received treatment from the medical
10 facility in Austin, Texas. From 2012 to present, Plaintiff has received treatment at
11 the Long Beach VA Medical Center.

12 2. In April 2014, VA agents subjected Plaintiff to an hours-long
13 discriminatory and inhumane interrogation. Agents conducted this interrogation
14 without justification or prior consideration of Plaintiff's well documented
15 disabilities. As a result of the interrogation and misrepresentations made by
16 defendants, the Los Angeles District Attorney erroneously charged Plaintiff with
17 criminal misconduct (making "terrorist threats"). At an August 21, 2014
18 preliminary hearing on that charge, the Honorable Arthur Jean Jr. of the Los
19 Angeles Superior Court found that even on the prosecution's best evidence,
20 Plaintiff committed no crime. Judge Jean Jr. dismissed the charges against
21 Plaintiff.

22 3. Instead of accepting this judgment, the next day VA police officers
23 and the prosecutor reinstituted the same charges without cause and added a false
24 charge of witness intimidation. Defendants maliciously waited until the following
25 Thursday afternoon before Labor Day weekend when they knew Plaintiff was
26 coming to the VA for medical treatment, and held Plaintiff at the Long Beach VA
27 until after normal business hours, to arrest Plaintiff. They did so for the improper
28 purpose of ensuring he would suffer in jail over the long weekend. Instead of

1 supporting Plaintiff and respecting the sacrifice he made for his country, the VA
2 and its agents and officials have made his life a nightmare all over again. This
3 action seeks to right these wrongs.

4 **JURISDICTION AND VENUE**

5 4. This case arises under 5 U.S.C. § 552a of the Privacy Act of 1974; 42
6 U.S.C. § 1983 and the Fourth and Fifth Amendments of the U.S. Constitution;
7 §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 et seq, and the Federal Tort
8 Claims Act (“FTCA”), 28 U.S.C. §§ 1346, 2671-2680. This Court has subject
9 matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343. This
10 Court has jurisdiction over Plaintiff's Privacy Act claims under 5 U.S.C. §
11 552a(g)(1)(D) and (5). Plaintiff filed an administrative claim under the FT CA on
12 or about October 14, 2015. This claim was denied on or about May 27, 2016,
13 enabling Plaintiff to bring his FTCA claims in this Court.

14 5. Venue is proper in this District pursuant to 28 U.S.C. § 1391 (b) and
15 (e) in that the unlawful actions challenged herein occurred in the Central District.
16 Venue is proper in this District over Plaintiff's Privacy Act claims pursuant to 5
17 U.S.C. §a(g)(5).

18 **PARTIES**

19 6. Plaintiff Nolan Lewis brings this action individually. After attending
20 Narbonne High School and Los Angeles City Harbor Junior College, Plaintiff was
21 drafted to serve in the United States Army and deployed to Vietnam during the
22 Vietnam War. He served in active combat from 1971 to 1972 with the 101st
23 Airborne Division and the 1st Air Cavalry. For his multiple air assaults and
24 outstanding combat service, Plaintiff was awarded, *inter alia*, a bronze star, a
25 Combat Infantry Badge, a National Defense Service Medal, a Vietnam Service
26 Medal, and a Vietnam Campaign Medal with 60 device.

27 7. After Plaintiff returned from combat in 1972, he was diagnosed with
28 PTSD and Agent Orange exposure during his service in Vietnam. Although he

1 attempted to obtain services from the VA many times, it was not until 2004 that the
2 VA began to provide him with the medical and psychological services he depends
3 on to function. Plaintiff is 100 percent disabled due to his service and receives all
4 of his medical, dental, and mental health care at the VA's Long Beach Medical
5 Center ("VALB").

6 8. Defendants William Mossbrooks and Chad Joy are law enforcement
7 officers for the Veteran's Administration Police Department ("VAPD"): a detective
8 and special agent for the Office of the Inspector General (OIG), respectively. At
9 all times material hereto Defendants were acting under the color of federal
10 authority. They are sued in their individual capacities.

11 9. Mabel Dea works in the Pharmacy at the VALB. She is sued in her
12 individual capacity as the complaining witness who provided false information to
13 VA officials and the District Attorney's office, leading to Plaintiff's arrest and
14 prosecution. She is not sued based on any in-court testimony she has given in this
15 matter.

16 10. The VA is the federal agency responsible for providing care for our
17 Nation's veterans. The VA is sued only on Plaintiff's claims under the Privacy
18 Act.

19 11. David Shulkin is the current Secretary of the VA. He is in charge of
20 implementing all VA policies and regulations. Defendant Shulkin is sued in his
21 official capacity for injunctive relief, to ensure those policies are implemented
22 properly in the future and that VA operations in Long Beach comply with the
23 constitutional rights of their patients. David Shulkin is also sued on Plaintiff's
24 claims for damages under the Rehabilitation Act of 1973.

25 12. The United States is sued pursuant to 28 U.S.C. §§ 1346(b) and 2671-
26 2680 which provides for actions to be brought against the United States for the
27 negligent and wrongful acts of federal employees taken within the scope of their
28

1 office or employment, including violations of applicable state law by such
2 employees.

3 13. Plaintiff is informed, believes, and thereon alleges that at all relevant
4 times, defendants DOES 1-10 were responsible for some or all of the acts
5 complained of herein. Plaintiff is ignorant of the true identities and capacities of
6 defendants DOES 1-10. For that reason, he sues those defendants by such
7 fictitious names. Plaintiff is informed, believes, and thereon alleges that each
8 fictitiously named defendant is in some manner and to some extent liable for the
9 injuries this complaint alleges. Plaintiff will seek leave to amend this complaint to
10 allege the true identities and capacities of these fictitiously named defendants when
11 they are ascertained.

12 14. Plaintiff is informed, believes, and thereon alleges that each defendant
13 is, and at all times mentioned was, the agent, employee, representative, successor,
14 and/or assignee of each other defendant. In performing the acts or omissions this
15 complaint alleges, each defendant acted within the scope of his or her actual or
16 apparent authority. Alternatively, each defendant-principal ratified and adopted
17 the acts or omissions of each defendant-agent. The defendant officers, including
18 those involved in the obstruction of justice, engaged in a conspiracy to violate
19 Plaintiff's constitutional rights and acted as co-conspirators with this aim in mind.

20 15. All individual defendants acted under the color of state or federal law
21 at all times relevant to the allegations herein, and are sued in both their individual
22 capacities unless otherwise specified.

23 16. In committing the acts this complaint alleges, the individual
24 defendants acted knowingly, maliciously, and with reckless or callous disregard for
25 Plaintiff's constitutional and other rights, justifying an award of punitive damages
26 against each individual defendant.

27
28 **STATEMENT OF FACTS**

1 17. Plaintiff's ordeal began on April 9, 2014. Plaintiff called the VA
2 Pharmacy in Long Beach in an attempt to refill his PTSD medications, without
3 which he is unable to function. An unidentified employee at the Pharmacy hung
4 up on him twice without addressing what Plaintiff viewed as a medical emergency.
5 Finally, he was able to speak to Defendant Mabel Dea, a clinical pharmacist.
6 Defendant Dea was helpful and indicated she would make sure his medications
7 were available the following day. Plaintiff complained to Defendant Dea about the
8 poor service he had received from the pharmacy, including that he had been hung
9 up on multiple times. Plaintiff said nothing to Defendant Dea that any responsible
10 person could possibly construe as a threat against anyone. Plaintiff was
11 complaining about the rude and unhelpful treatment he received before he spoke to
12 Defendant Dea.

13 18. The following day, Plaintiff went to the VALB, without incident, to
14 pick up his critical medications from the pharmacy. Unbeknownst to him,
15 Defendant Dea had falsely reported to her supervisor, most of her co-workers in
16 the Pharmacy, and the VA Police that Plaintiff had threatened his VA doctor, Dr.
17 Merchant.

18 19. When Plaintiff returned to his home in Lomita that afternoon, he
19 found a business card left by Special Agent Chad Joy ("Defendant Joy"), of the
20 VA's Office of the Inspector General ("OIG"). Defendant's Joy's cell phone
21 number was scrawled on the card. Plaintiff immediately called Defendant Joy,
22 who told Plaintiff he would like to visit him the following day to interview him
23 about an incident that had occurred in his neighborhood. Defendant Joy did not
24 provide additional details about the incident, but Plaintiff immediately agreed to
25 meet with him.

26 20. About an hour and a half later, Plaintiff was startled by a loud knock
27 at his door. When he looked through the door window, he saw Defendant Joy and
28 Detective William Mossbrooks ("Defendant Mossbrooks"). Plaintiff went outside

1 to talk to the officers on his porch. Defendant Joy stated he was a Special Agent
2 with the OIG. His badge was on his belt. Defendant Mossbrooks stated he was an
3 FBI Agent. Plaintiff thought Defendant Mossbrooks looked more like a drug
4 dealer, as he had shaggy hair and a T-Shirt and wore faded jeans and dirty tennis
5 shoes. Becoming scared, Plaintiff asked Defendant Mossbrooks to show him proof
6 of identification. Mossbrooks pulled a badge from his pocket. Plaintiff looked and
7 saw the letter, "FBI." After a few more minutes of Mossbrook's foul language and
8 rude behavior, believing Mossbrook could not possibly be an FBI agent, Plaintiff
9 requested a second time and in fact saw the letters, "FBI." After a short period of
10 time, neighbors began exiting their homes to see what was happening on Plaintiff's
11 porch. As more and more people began to crane their necks to see what was going
12 on, Defendant Joy stated he was satisfied with the information Plaintiff provided
13 them and told Plaintiff the interview would be over on one condition: That the
14 officers could do a quick search of Plaintiff's home to ensure he had no weapons.
15 Plaintiff did not want to grant the officers entry into his home, but they ultimately
16 prevailed on him to let them in. He allowed the two men to come into his home
17 with specific permission only to search for weapons, even though they did not have
18 a warrant.

19 21. The officers asked Plaintiff if he had any guns, and he replied that he
20 did not. They asked to search his home for guns, and he consented to a search for
21 that limited purpose. Defendant Mossbrooks then conducted a search that went far
22 beyond the consent Plaintiff had given. Mossbrooks also went through Plaintiff's
23 papers, Samsung tablet and cell phone.

24 22. Once inside his house Defendants Mossbrooks and Joy questioned
25 Plaintiff in an aggressive and intimidating manner designed to exacerbate his
26 PTSD symptoms. They claimed Plaintiff has made "a threatening phone call" to a
27 VA employee and insisted they would leave him alone only if he admitted
28 to making this call. Defendants Mossbrooks and Joy warned that they would

1 arrange for Plaintiff to be detained in jail over a weekend if he did not admit he
2 made the call. Mossbrooks accused him of lying about the call he made to the
3 pharmacy. As Defendants badgered Plaintiff, he suffered increasing symptoms of
4 PTSD. The physically imposing Defendant Mossbrooks directed epithets, curses,
5 and other threatening and demeaning language at Plaintiff in an effort to intimidate
6 him. Pacing and lunging repeatedly at Plaintiff physically, Mossbrooks called
7 Plaintiff a “fuckin’ liar,” a “fuckin’ asshole,” a “piece of shit,” and “one of those
8 Vietnam baby killers.” Mossbrooks not only mocked Plaintiff’s military service
9 but also his religion. Upon finding Plaintiff’s PTSD medications Mossbrooks said,
10 “You take all these meds, you’re a fuckin’ pill head.” Highly agitated, Defendant
11 Mossbrooks stated that he and Special Agent Joy had taken separate cars to
12 Plaintiff’s home, and that if Plaintiff did not confess, Detective Mossbrooks would
13 take him to a place where he could beat the Plaintiff without anyone knowing.
14 Plaintiff refused to admit to something he had not done and he repeatedly asked the
15 officers to stop terrifying him. Plaintiff was frightened and upset by the manner in
16 which Joy and Mossbrooks conducted themselves and he felt he was in physical
17 danger. As a result of defendant Joy and Mossbrooks’s actions, Plaintiff suffered
18 from extreme emotional distress causing his PTSD symptoms to skyrocket.

19 23. Defendants Mossbrooks and Joy detained Plaintiff in his home against
20 his will. They interrogated him for approximately three hours and refused to stop
21 even when Plaintiff asked. They had no arrest or search warrant, and the search
22 they conducted of Plaintiff’s home far exceeded the scope of his consent, which
23 was limited to a search for weapons he did not possess. Throughout all of this,
24 Defendants Mossbrooks and Joy were well aware that Plaintiff had been diagnosed
25 with PTSD and that his military service had left him 100 percent disabled. In fact,
26 their techniques were intentionally designed to exacerbate Plaintiff’s PTSD
27 symptoms, and they did so.

1 24. The following day, Defendants Mossbrooks and Joy returned to
2 Plaintiff's home. Additional unidentified officers and multiple Los Angeles
3 County Sheriff's Department deputies accompanied them. The officers intended to
4 arrest Plaintiff based upon a warrant they obtained, falsely accusing Plaintiff of
5 having made a threatening phone call to Defendant Dea and stealing drugs from
6 the VA pharmacy. When Plaintiff opened his door to the officers, Defendant
7 Mossbrooks pushed him to the floor. Kneeling over him, Defendant Mossbrooks
8 handcuffed and arrested Plaintiff. Defendant Mossbrooks had no basis for
9 throwing Plaintiff to the floor, as he was fully cooperative and posed no threat to
10 the officers. At no point did Plaintiff resist being arrested or handcuffed. Plaintiff
11 specifically asked if he could take his critical psychiatric medications, but
12 Defendant Mossbrooks refused to let him take the medications there or take them
13 with him to jail.

14 25. Officers took Plaintiff to the jail at the Long Beach Police
15 Department, but jail authorities refused to admit him because his blood pressure
16 was significantly elevated. This was due to the fact that Defendants terrified
17 Plaintiff's PTSD mental condition with their behavior, and that someone was
18 falsely accusing Plaintiff of a crime. Officers then took Plaintiff to the VALB
19 hospital to stabilize his blood pressure. By the time he got there, his blood
20 pressure was still elevated but not life threatening. Plaintiff asked a VA emergency
21 room doctor for at least one dose of his daily critical psychiatric medication
22 because he had not taken it yet that day, but the doctor refused. His VA doctors
23 had cautioned Plaintiff that he should never stop taking his psychiatric medications
24 abruptly because it could be life threatening. This caused Plaintiff even more
25 anxiety.

26 26. Officers took Plaintiff to the Twin Towers Correctional Facility in
27 Downtown Los Angeles, where an intake team booked and admitted him. There,
28 Plaintiff repeatedly asked to see a doctor, and for access to his psychiatric

1 medications. Despite these requests, no doctor or other medical professional
2 visited Plaintiff during his detention. Nor did anyone give Plaintiff his medications
3 for PTSD or his other numerous medical problems. Without his critical psychiatric
4 medications, Plaintiff suffered severe anxiety, nausea, diarrhea, dehydration,
5 vomiting, and severe cluster type migraine headaches due to his PTSD and other
6 medical conditions. Plaintiff was unable to sleep the entire time he was detained
7 because, without his critical Psychiatric medications, Plaintiff cannot sleep. This
8 is documented in Plaintiff's VA medical records.

9 27. On Sunday, Plaintiff's sister was able to post bail for Plaintiff, at great
10 expense, to end his ordeal and give him access to the medications he so desperately
11 needed. Though the medications tempered his symptoms, Plaintiff began to suffer
12 PTSD and other medical symptoms to a greater degree and with more frequency
13 than he did before the above-described ordeal.

14 28. These false charges forced Plaintiff to hire a lawyer and pay that
15 lawyer a substantial fee. At all times Plaintiff denied that he had engaged in any
16 wrongdoing whatsoever.

17 29. On August 21, 2014, the Honorable Arthur Jean Jr. held a preliminary
18 hearing in Los Angeles Superior Court in Long Beach to determine whether
19 Plaintiff should stand trial for making "terrorist" threats under Penal Code §
20 422(a). After hearing the testimony of Defendant Dea - the pharmacist who had
21 assisted Plaintiff on April 9, 2014 - concerning the statements Plaintiff allegedly
22 made, Judge Jean dismissed the charges. According to Judge Jean, Plaintiff's
23 alleged words did not amount to a "terrorist" threat, whether or not he said them.

24 30. On his way out of the courtroom, Plaintiff passed a room where
25 witnesses for the prosecution sat. He recognized his VA doctor in the room, but
26 made no gesture and said nothing to anyone in or near the room. Plaintiff was
27 simply walking out of the courthouse. As Plaintiff walked out, Defendant
28 Mossbrooks, ran after Plaintiff, unprovoked, got right behind him and in a very

1 threatening and angry tone said, "Don't stare at my witnesses. This ain't over. I'm
2 going to fucking get you." Plaintiff did not respond to this statement and
3 continued walking out of the building.

4 31. The next day, August 22, 2014, Defendants ramped up their campaign
5 against Plaintiff by refiling precisely the same "terrorist threat" charges, without
6 cause, that Judge Jean had dismissed the day before. Only now, there was an
7 additional false charge of witness intimidation. Defendants obtained an arrest
8 warrant on Friday August 22, 2014, but did not arrest Plaintiff until the following
9 Thursday afternoon, August 28, 2014. They did this so Plaintiff would have to
10 spend the entire Labor Day weekend in detention, this time at the Long Beach
11 Police Department.

12 32. Once again Plaintiff was denied access to critical medications and care
13 and, as a result, suffered the same agonizing symptoms of PTSD and his other
14 medical conditions as he did during his April, 2014 detention. Once again, his
15 sister was forced to post bail over the weekend to end his ordeal. In fact, because
16 of the witness intimidation charges, this time the amount of bail was dramatically
17 increased by an additional \$100,000.00. The additional false charge forced
18 Plaintiff to spend a substantial amount of additional money to continue to retain a
19 criminal lawyer to represent him in these renewed proceedings. Defendants
20 Mossbrooks and Joy added this false witness intimidation charge with the intent
21 that Plaintiff not be able to post bail and would be forced to suffer a long period of
22 detention, up to six days without his critical psychiatric medicines – Thursday to
23 Tuesday – as they had threatened all along.

24 33. Defendant Dea works as a pharmacist at the VALB. She is the
25 pharmacist who helped Plaintiff obtain his needed medication in April 2014. The
26 interaction between Plaintiff and Defendant Dea was pleasant, and Plaintiff did not
27 say one negative word toward Defendant Dea or anyone else. However, he did
28 complain about the way her colleagues in the pharmacy had treated him, including

1 hanging up on him more than once and refusing to help him get his medications.
2 At no point did Plaintiff utter any words that any reasonable person could possibly
3 construe as a "threat" to Defendant Dea, Dr. Merchant, or anyone else.

4 34. The VA has policies and procedures to identify veterans who may
5 pose a threat. When a veteran is found to pose a threat, the VA puts a "Patient
6 Record Flag" ("PRF" or "flag") in their records. All VA employees, including
7 pharmacists and VA police, can access these records electronically. Unbeknownst
8 to Plaintiff, there was a flag in his file relating to a 2010 San Antonio, Texas
9 incident in which a VA employee claimed Plaintiff made a threat. Kyle, Texas
10 police officers visited Plaintiff about this report and found Plaintiff posed no threat.
11 As far as Plaintiff was aware, the matter ended there and was assured that this was
12 the case by Walt Dannenberg, a VA supervisor. In fact, Plaintiff's medical records
13 were flagged and the flag was never removed even though it was supposed to be
14 removed in 2012 by its own terms. At the bottom of the flag was the admonition,
15 "This flag shall be removed August 2012." Defendant Dea relied on this "flag" to
16 make the false claims against Plaintiff that led to his false arrest.

17 35. The VA's behavioral flag policy specifically precludes any flag from
18 being used for law enforcement purposes. The VA designed the flag procedure for
19 treatment purposes and requires VA personnel to go through a variety of steps with
20 safeguards for veterans. Because none of those steps occurred in the context of the
21 2010 incident, the VA violated its own policies and procedures by letting the 2010
22 flag remain in Plaintiff's records. No VA employee could believe the existence of
23 a flag justified making allegations of "terrorist" threats against a veteran patient at a
24 VA facility, and the VA's own policies specifically prohibited making allegations
25 on this basis.

26 36. As a pharmacist, Defendant Dea had access to Plaintiff's medical and
27 psychological records, including the 2010 flag which remained on his records
28 improperly under the applicable directive. Given her testimony at the preliminary

1 hearing in August 2014, it is apparent that Defendant Dea used Plaintiff's VA
2 records for a prohibited purpose and pretended Plaintiff made threatening
3 statements in 2014. She provided knowingly false information to the VA law
4 enforcement officers and prosecutors, and caused Plaintiff's false arrest, malicious
5 prosecution, and injuries as described in this complaint.

6 37. Defendants Joy and Mossbrooks also knew the information from
7 Plaintiff's 2010 flag, could not be used for law enforcement purposes. Despite this
8 knowledge, they purposefully took steps to have Plaintiff arrested without
9 justification and made false statements to the District Attorney's Office, causing
10 prosecutors to initiate and then reinstate malicious criminal proceedings against
11 Plaintiff. Defendant Mossbrooks also lied to prosecutors when he informed them
12 that Plaintiff intimidated prosecution witnesses at the August 2014 preliminary
13 hearing. He made these false statements and other false statements (e.g that
14 Plaintiff had stolen medications from the VALB pharmacy) solely to ensure
15 Plaintiff would be falsely arrested, prosecuted, and suffer unnecessary
16 imprisonment. After the terrorist threat charges of April 2014 were dismissed, as
17 Plaintiff walked by the room where additional prosecutorial witnesses were seated,
18 Defendant Mossbrooks ran aafter Plaintiff and told him, "Don't stare at my
19 witnesses. This isn't over. I'm gonna fuckin' get you."

20 38. The District Attorney's Office never charged Plaintiff with witness
21 intimidation, but Plaintiff was nevertheless forced to post a \$100,000.00 bond for
22 the charge. In May 2015, the renewed "terrorist threat" charge was dropped with
23 prejudice in the interests of justice without the case ever being presented to another
24 preliminary hearing.

25
26 **FIRST CLAIM FOR RELIEF**
27 **(VIOLATIONS OF THE PRIVACY ACT)**
28 **(Against Defendant VA)**

1 39. Plaintiff incorporates paragraphs 1 to 38 herein as though set forth in
2 full.

3 40. This claim is against Defendant VA for violation of the Privacy Act,
4 as amended, 5 U.S.C.A. § 552a ("Privacy Act").

5 41. All of Plaintiff's confidential medical records, including the
6 information contained in them and any derivative information, are maintained in
7 Privacy Act systems of records maintained by the VA. The Privacy Act protects
8 these records from unauthorized disclosure.

9 42. Defendant VA, through its officials, agents, and/or employees,
10 intentionally and/or willfully failed to properly maintain the contents of records
11 maintained in Privacy Act systems of records, pertaining to Plaintiff, including but
12 not limited to the Patient flags. This was in contravention of the VA's own
13 regulations and internal policies and in violation of federal regulations and the
14 Privacy Act.

15 43. Defendant VA, and its officials, agents and/or employees, made no
16 effort to assure the accuracy, completeness, timeliness or relevance of the
17 aforementioned records about Plaintiff in violation of the Privacy Act. In fact, VA
18 officials in San Antonio, Texas, knew the 2010 flag was based on erroneous
19 information and assured Plaintiff that his records would be corrected. Instead, the
20 2010 flag was improperly maintained without Plaintiff's knowledge in violation of
21 the Privacy Act. The flag was maintained past 2012 in violation of the VA's own
22 policy.

23 44. Defendant VA's violations of the Privacy Act with respect to
24 Plaintiff's confidential medical records are ongoing and continuing.

25 45. As a direct and proximate result of these violations of the Privacy Act
26 and Defendant VA's intentional and willful failures to amend the contents of
27 records pertaining to Plaintiff maintained in record systems covered by the Privacy
28 Act, harms to Plaintiff have occurred. Such failures by Defendant VA constitute a

1 violation of Plaintiff's rights under the Privacy Act, and are the direct and
2 proximate cause of the damages Plaintiff suffered starting in April 2014, as
3 described herein.

4 46. As a direct and proximate cause of each of the above-referenced
5 intentional and willful violations of the Privacy Act of 1974 by Defendant VA,
6 Plaintiff has suffered an "adverse effect," as defined in 5 U.S.C.A., §
7 552a(g)(1)(D), including but not limited to direct and indirect injury to Plaintiff's
8 reputation, embarrassment, humiliation, anxiety, physical upset, emotional upset,
9 mental anguish, physical pain and suffering, damage to his career and professional
10 reputation, out-of-pocket pecuniary losses, inconvenience and unfairness, and fear
11 of further violations of Plaintiff's privacy rights by the VA.

12 47. As a direct and proximate cause of each of the above-referenced
13 intentional and willful violations of the Privacy Act by defendant VA, Plaintiff has
14 suffered damages including, but not limited to, actual pecuniary damages and
15 actual non-pecuniary damages in the form of direct and indirect injury to Plaintiff's
16 reputation, embarrassment, humiliation, anxiety, physical upset, emotional upset,
17 mental anguish, physical pain and suffering, and damage to his career and
18 professional reputation. Plaintiff's damages are ongoing and continuing.

19
20
21
22
23
24
25 **SECOND CLAIM FOR RELIEF**

26 **(FOURTH AMENDMENT VIOLATION: FALSE ARREST)**

27 **(Against Defendants Joy, Mossbrooks and Dea)**

1 48. Plaintiff incorporates paragraphs 1 to 47 herein as though set forth in
2 full.

3 49. This claim against Defendants Dea, Mossbrooks and Joy for false
4 arrest in violation of Plaintiffs' Fourth Amendment rights is brought pursuant to
5 *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403
6 U.S. 388 (1971).

7 50. At all times herein mentioned, Defendants Mossbrooks and Joy, as
8 agents acting under the color of federal law, were obligated to comply with the
9 Fourth Amendment to the United States Constitution, including freedom from
10 unreasonable search and seizure and false arrest.

11 51. Defendants Dea, Joy and Mossbrooks knew that Plaintiff had not
12 uttered "terrorist" threats or any threats. At most, Plaintiff expressed criticism of
13 the rude treatment he received from other personnel in the Pharmacy at the VALB.
14 Despite knowing Plaintiff had committed no crime, these defendants conspired to
15 present false charges to prosecutors in order to obtain an arrest warrant and file
16 false criminal charges against Plaintiff.

17 52. Defendants Dea, Mossbrooks, and Joy acted as complaining witnesses
18 in the warrant issuance process and, through acts or omissions, caused a warrant to
19 be issued for Plaintiff's arrest in April 2014 despite a lack of probable cause. Their
20 actions led to Plaintiff's false arrest in April 2014 and rearrest in August 2014.

21 53. Again, in August, 2014, Defendants Dea, Mossbrooks, and Joy, acting
22 as complaining witnesses, caused a warrant to be issued for Plaintiff's arrest by,
23 inter alia, fabricating witness intimidation charges. Police officers arrested
24 Plaintiff the next week on allegations of witness intimidation and making a terrorist
25 threat. Again, there was no basis upon which the Defendants could have
26 reasonably believed Plaintiff had committed the crimes with which he was
27 charged.

28

1 54. Plaintiff experienced extreme mental distress when police officers
2 denied him his critical psychiatric medications, and was twice embarrassed when
3 police officers arrested him without probable cause and publicly transported him to
4 jail. Plaintiff suffered financially in having to post bail twice after being arrested
5 and detained without probable cause. Plaintiff suffered physically when police
6 officers used excessive force to throw him to the floor during his first arrest, and
7 when those officers denied him medical care during each false arrest. Plaintiff is
8 thus entitled to compensatory and punitive damages in accordance with proof at
9 trial.

10
11 **THIRD CLAIM FOR RELIEF**
12 **(FOURTH AMENDMENT VIOLATION: UNREASONABLE AND**
13 **EXCESSIVE USE OF FORCE)**
14 **(Against Defendants Joy and Mossbrooks)**

15 55. Plaintiff incorporates by reference each and every allegation contained
16 in paragraphs 1 through 54 herein as though set forth fully herein.

17 56. This claim is against Defendants Mossbrooks and Joy for unlawful
18 detention in violation of Plaintiffs' Fourth Amendment right to freedom from
19 unreasonable search and seizure, which includes the right to be free from
20 unreasonable and excessive force during search and seizure.

21 57. Defendants Mossbrooks and Joy were, at all times referenced herein,
22 acting under the color of federal law.

23 58. Officers arrived at Plaintiffs house on April 11, 2014 and announced
24 themselves through the door. Plaintiff responded that he needed to put on pants
25 and would then exit peacefully. At that point, Defendant Mossbrooks threatened to
26 shoot Plaintiff.

27 59. Defendants Mossbrooks and Joy knew from their search and
28 interrogation the previous day, and from Plaintiff's VA files, that Plaintiff had no

1 guns, suffered from mental and physical disabilities, and was not a threat to the
2 safety of Defendants or others.

3 60. When Plaintiff opened the door to his home, Defendant Mossbrooks
4 rushed in and pushed Plaintiff to the floor, harshly twisting his arms back behind
5 his back. Despite being able, other officers did nothing to prevent Defendant
6 Mossbrooks from using excessive force against Plaintiff.

7 61. As a direct proximate result of Defendants' use of excessive force,
8 Plaintiff suffered physical and emotional injuries entitling Plaintiff to
9 compensatory and punitive damages in accordance with proof at trial.

10
11 **FOURTH CLAIM FOR RELIEF**
12 **(VIOLATION OF FOURTH AND FIFTH AMENDMENT RIGHTS:**
13 **MALICIOUS PROSECUTION)**

14 **(Against Defendants Joy, Mossbrooks and Dea)**

15 62. Plaintiff incorporates by reference each and every allegation contained
16 in paragraphs 1 through 61 as if set forth fully herein.

17 63. This claim is against Defendants Mossbrooks and Joy for malicious
18 prosecution and abuse of authority in violation of Plaintiff's Fourth and Fifth
19 Amendment rights.

20 64. Defendants Dea, Mossbrooks, and Joy acted as complaining witnesses
21 in order to obtain an arrest warrant from the Los Angeles Superior Court and
22 convince the Los Angeles District Attorney's Office to prosecute Plaintiff for
23 felony "terrorist" threats, despite knowing Plaintiff had made no such threats.
24 Assistant District Attorney Vance Davis charged Plaintiff with making "terrorist"
25 threats and later with witness intimidation. Mr. Davis initiated this prosecution
26 based entirely on the false statements these Defendants made. Defendants made
27 these statements and initiated the prosecution maliciously in order to cause
28 Plaintiff harm and to retaliate against him for exercising his First Amendment right

1 to criticize the VA and its employees concerning the way they treat veterans. For
2 example, Defendant Mossbrooks, accosted the Plaintiff and threatened, "Don't
3 stare at my witnesses. This ain't over. I'm gonna fuckin get you."

4 65. Judge Jean dismissed all charges against Plaintiff with prejudice in
5 May 2015. The District Attorney's office never pursued the witness intimidation
6 charges, and Plaintiff has received a favorable termination of all other charges
7 against him.

8 66. No probable cause existed for either the "terrorist" threat or witness
9 intimidation charges, a fact Defendants knew from the beginning. Moreover, on
10 August 21, 2014, Judge Jean ruled the charges had no merit. Defendants knew
11 these charges were refilled maliciously and were intended to "get" Plaintiff, as
12 Defendant Mossbrooks promised, with no legitimate basis for doing so.

13 67. As a direct, proximate result of Defendants' acts and omissions,
14 Plaintiff has suffered physical, emotional and financial injuries, entitling Plaintiff
15 to compensatory and punitive damages in accordance with proof at trial.

16 68. Plaintiff suffered harm in the form of economic hardship when he was
17 forced to pay excessive bail and legal fees due to the additional witness
18 intimidation allegation. He also suffered physical hardship as he was denied
19 medical care again while wrongly incarcerated.

20
21
22
23
24
25 **FIFTH CLAIM FOR RELIEF**
26 **(ABUSE OF PROCESS IN VIOLATION OF FOURTH AND**
27 **FIFTH AMENDMENTS)**
28 **(Against Defendants Joy, Mossbrooks and Dea)**

1 69. Plaintiff incorporates by reference each and every allegation contained
2 in paragraphs 1 through 68 as if set forth fully herein.

3 70. Defendants Mossbrooks and Joy misused their authority for the
4 purpose of causing Plaintiff misery and emotional distress. Initially, these
5 Defendants did so by interrogating Plaintiff in an intimidating and demeaning way
6 intended to cause him humiliation and intense emotional distress. These
7 Defendants then abused the first arrest warrant by enforcing it in a manner
8 designed to cause Plaintiff the maximum degree of physical and emotional distress.

9 71. After Judge Jean, at Plaintiff's August 21, 2014 preliminary hearing,
10 found Plaintiff to have committed no crime, Defendants Mossbrooks and Joy
11 compounded their abuse of process by causing "terrorist threat" charges to be
12 refilled without cause. They did this the next day, without cause, even though
13 Judge Jean had found that Plaintiff had not committed any criminal act in his call
14 to Ms. Dea. Moreover, although they obtained an arrest warrant on April 22, 2014,
15 these Defendants intentionally waited to arrest Plaintiff until Thursday afternoon
16 August 28, 2014, right before the Labor Day weekend, so that Plaintiff would
17 spend more time in custody. Indeed, Defendants held Plaintiff at the VALB until
18 after normal business hours on August 28, 2014, to ensure Plaintiff would have to
19 endure imprisonment over the weekend, up to six days. Moreover, as part of this
20 scheme to punish Plaintiff, these Defendants manufactured a false witness
21 intimidation charge so that Plaintiff's bail would be set at an amount that prevented
22 him from obtaining bail over the weekend.

23 72. These abuses of Defendants' official authority amount to abuse of
24 process in violation of the Fourth and Fifth Amendments.

25 73. As a direct proximate result of Defendants' acts and omissions,
26 Plaintiff has suffered physical, emotional, and financial injuries entitling Plaintiff
27 to compensatory and punitive damages in accordance with proof at trial.
28

1 74. Plaintiff suffered harm in the form of economic hardship when he was
 2 forced to pay excessive bail due to the additional witness intimidation allegation.
 3 He also suffered physical hardship, as he was again denied medical care while
 4 wrongly incarcerated.

5
 6 **SIXTH CLAIM FOR RELIEF**
 7 **(VIOLATIONS OF THE REHABILITATION ACT OF 1973)**
 8 **(Against Defendant David Shulkin)**

9 75. Plaintiff incorporates by reference each and every allegation contained
 10 in paragraphs 1 through 74 as if set forth fully herein.

11 76. Plaintiff brings this claim against Defendant David Shulkin in his
 12 official capacity as Secretary of Veterans Affairs pursuant to 29 U.S.C. § 701.

13 77. At all relevant times, Plaintiff was a qualified individual with a
 14 disability under the Rehabilitation Act. See 29 U.S.C. § 705(20). The Department
 15 of Veterans' Affairs rates Plaintiff's service connected disability at 100 percent due
 16 to severe, chronic PTSD. A 100 percent rating for a mental disorder requires
 17 complete occupational and social impairment. 38 C.F.R. § 4.130. Plaintiff also
 18 suffers from other service connected disabilities, including diseases caused by
 19 VA's failure to treat Plaintiff's PTSD for more than thirty years.

20 78. The VA is a federal agency and thus covered by Section 504. See 28
 21 C.F.R. § 42.540. Under Section 504, the VA must reasonably accommodate
 22 persons with disabilities in their program activities and services, and reasonably
 23 modify those programs and services to accomplish this purpose.

24 79. The Rehabilitation Act brings within its scope "anything a public
 25 entity does." 28 C.F.R. §35.102. The VA's provision of medical care, as well as
 26 its investigation and arrest of Plaintiff, constitute programs and services for
 27 purposes of Section 504.

1 80. Plaintiff was denied the benefit of medical care solely because of his
2 disability, within the meaning of the Rehabilitation Act. In addition, he was denied
3 access to his long-time primary care doctor, Dr. Merchant, at the VALB because
4 of the discriminatory actions and failure to accommodate described throughout this
5 complaint.

6 81. At all times relevant here, Plaintiff's mental illness was well known to
7 the VA and its officials and employees. Specifically, Defendants knew that
8 Plaintiff suffers from debilitating PTSD and other related physical disabilities.

9 82. The VA discriminated against Plaintiff by failing to reasonably
10 accommodate his mental illness. Specifically, Defendants Mossbrooks and Joy
11 used threats, accusations, intimidation, and false statements during their
12 investigation and arrest of Plaintiff. In doing so, Defendants Mossbrooks and Joy
13 acted with deliberate disregard for Plaintiff's severe PTSD by knowingly,
14 willfully, and/or recklessly using investigative techniques that aggravate the
15 symptoms of PTSD.

16 83. Because there were no exigent circumstances, Defendants
17 Mossbrooks and Joy could and should have reasonably accommodated Plaintiff by
18 using investigative techniques that would not aggravate the symptoms of PTSD.
19 For example, abstaining from using threats of violence or intimidation would have
20 accommodated Plaintiff's disabilities.

21 84. Defendants Mossbrooks and Joy's failure to take Plaintiff's severe
22 PTSD into account or employ proper police practices for investigating a person
23 with a mental illness constitutes intentional discrimination and deliberate
24 indifference for which Defendant David Shulkin, in his official capacity as
25 Secretary of the VA, is vicariously liable under the Rehabilitation Act.

26 85. Such accommodation of the Plaintiff's disability would not constitute
27 an undue burden requiring "a fundamental alteration in the nature of a service,
28

1 program, or activity or in undue financial or administrative burdens." See 28
 2 C.F.R. § 35.150(a)(3).

3 86. The VA had a duty to make reasonable accommodations to its
 4 investigation, arrest, and use of force procedures when confronting a person with a
 5 disability, such as Plaintiff, including, inter alia, providing specialized training to
 6 VA police officers for investigating persons that are mentally disabled.

7 87. The VA failed to train, supervise, and/or discipline its police officers,
 8 and/or DOES 1-10, regarding the appropriate investigation and arrest procedures
 9 for confronting a person with a severe mental illness. The VA provides medical
 10 care for veterans, many of whom are mentally or physically disabled. The VA's
 11 police officers work exclusively in a health care environment, and its failure to
 12 train, supervise, or discipline its police officers regarding interacting with persons
 13 suffering from mental illness constitutes deliberate indifference.

14 88. As a direct and proximate result of the VA's unlawful conduct,
 15 Plaintiff suffered, and continues to suffer, an extreme increase in anxiety, mental
 16 anguish, emotional distress, and aggravation of his PTSD.

17 89. Plaintiffs are entitled to recover reasonable attorneys' fees under 29
 18 U.S.C. § 794a.

19 **SEVENTH CLAIM FOR RELIEF**

20 **(VIOLATION OF CALIFORNIA CIVIL CODE §52.1)**

21 **(FTCA Against Defendant UNITED STATES)**

22 90. Plaintiff incorporates by reference each and every allegation contained in
 23 paragraphs 1 through 90 as if set forth fully herein.

24 91. California Civil Code §52.1 provides a cause of action against any
 25 person who "interferes by threats, intimidation, or coercion, or attempts to interfere
 26 by threats, intimidation, or coercion, with the exercise or enjoyment by any
 27
 28

1 individual . . . of rights secured by the Constitution or laws of the United States, or
 2 of the rights secured by the Constitution or laws of the state. . .”

3 92. Defendants Mossbrooks and Joy violated Civil Code §52.1 in
 4 committing the actions against Plaintiff alleged in this Amended Complaint,
 5 including, but not limited to, the circumstances surrounding their interrogation and
 6 arrest of Plaintiff.

7 93. As a direct and proximate cause of the aforementioned acts and
 8 omissions by Defendants Mossbrooks and Joy, and other agents or employees of
 9 the United States, Plaintiff is entitled to statutory damages under California Civil
 10 Code §52 and to compensatory damages in accordance with proof at trial.

11 94. Defendant United States and its managers, officers, and/or directors
 12 authorized or ratified the wrongful conduct of their employees and agents.
 13 Defendant United States engaged in the acts alleged herein and/or condoned,
 14 permitted, authorized, and/or ratified the conduct of its employees and agents and
 15 are vicariously liable for the wrongful conduct of its employees and agents for this
 16 cause of action.

17 **EIGHTH CLAIM FOR RELIEF**

18 **(FTCA: INTENTIONAL INFICTION OF EMOTIONAL DISTRESS)**

19 **(Against Defendant UNITED STATES)**

20 95. Plaintiff incorporates by reference each and every allegation contained in
 21 paragraphs 1 through 95 as if set forth fully herein.

22 96. In acting as alleged in this Amended Complaint Defendants Mossbrooks,
 23 Joy and Dea, and other as yet unknown defendants, while acting within the course
 24 and scope of their employment, intentionally acted in an outrageous manner
 25 designed to cause, and causing, severe emotional distress to Plaintiff. These acts
 26 included physical and psychological threats, insults and conduct intended to
 27 humiliate Plaintiff even though these Defendants and others at the VA knew that
 28

1 Plaintiff suffered, among other things, from severe PTSD as a result of his military
2 service.

3 97. The United States engaged in these acts or omissions and/or condoned,
4 permitted, authorized, and/or ratified the conduct of its employees or agents as
5 alleged in this Amended Complaint.

6 98. As a result of the aforementioned acts or omissions, Plaintiff suffered
7 and continues to suffer severe emotional distress and the exacerbation of his pre-
8 existing PTSD symptoms. Plaintiff is entitled to compensatory damages for all of
9 the harms caused by Defendants' actions.

10
11 **NINTH CLAIM FOR RELIEF**

12 **(FTCA: NEGLIGENCE)**

13 **(Against Defendant UNITED STATES)**

14 99. Plaintiff incorporates by reference each and every allegation contained
15 in paragraphs 1 through 99 as if set forth fully herein.

16 100. The agents and employees of the United States involved in the actions
17 alleged against Plaintiff owed Plaintiff a duty of care with respect to their actions
18 toward him in his interactions with the VA. As alleged in this Amended
19 Complaint, the Defendants, and other as yet unknown agents and employees of the
20 United States, breached their duty of care by the actions and omissions alleged in
21 this Amended Complaint, including, but not limited, to initiating law enforcement
22 action against Plaintiff based on an erroneous statement in his medical and other
23 records relating to an incident in Texas. This erroneous statement should never
24 have been used as a basis for law enforcement action and should have been
25 removed from Plaintiff's file in accordance with the VA's own internal policies
26 and procedures designed to prevent the kind of problems Defendants caused in this
27 case.

1 101. The United States engaged in these acts or omissions and/or condoned,
2 permitted, authorized, and/or ratified the conduct of its employees or agents as
3 alleged in this Amended Complaint.

4 102. As a result of the aforementioned acts or omissions, Plaintiff suffered
5 and continues to suffer severe emotional distress and the exacerbation of his pre-
6 existing PTSD symptoms. Plaintiff is entitled to compensatory damages for all of
7 the harms caused by Defendants' actions.

8
9
10 **TENTH CLAIM FOR RELIEF**

11 **(FTCA: ASSAULT AND BATTERY)**

12 **(Against Defendant UNITED STATES)**

13
14 103. Plaintiff incorporates by reference each and every allegation contained
15 in paragraphs 1 through 104 as if set forth fully herein.

16 104. This count is based on the actions of Defendants Mossbrooks and Joy
17 as alleged above. Each of these Defendants, acting in the course and scope of
18 their employment, committed acts which were intended to and resulted in
19 Plaintiff's imminent apprehension of and harmful or offensive contact with
20 Plaintiff to which Plaintiff did not consent. Defendants Mossbrooks and Joy made
21 numerous threats of violence and other threats against Plaintiff in circumstances in
22 which Plaintiff reasonably thought the threats would be carried out. These
23 Defendants also touched Plaintiff without his consent without a law enforcement
24 justification for doing so, thus committing the tort of battery.

25 105. The United States engaged in these acts or omissions and/or condoned,
26 permitted, authorized, and/or ratified the conduct of its employees or agents as
27 alleged in this Amended Complaint.

1 106. As a result of the aforementioned acts or omissions, Plaintiff suffered
 2 and continues to suffer severe emotional distress and the exacerbation of his pre-
 3 existing PTSD symptoms. Plaintiff is entitled to compensatory damages for all of
 4 the harms caused by Defendants' actions.

5
 6
 7 **ELEVENTH CLAIM FOR RELIEF**

8 **(FTCA: FALSE ARREST AND IMPRISONMENT)**

9 **(Against Defendant UNITED STATES)**

10 107. Plaintiff incorporates by reference each and every allegation contained
 11 in paragraphs 1 through 108 as if set forth fully herein.

12 108. This count is based on the actions of Defendants Dea, Mossbrooks and
 13 Joy as alleged above. These defendants arrested or caused Plaintiff to be arrested
 14 knowing that he had not committed any crime in April 2014 and again in August
 15 2014. Defendants acted with malice in causing Plaintiff's arrests and detentions.
 16 In particular, Defendants Mossbrooks and Joy rearrested and caused Plaintiff's
 17 false imprisonment in August 2014 when they arrested Plaintiff after a Los
 18 Angeles Superior Court Judge had ruled that there was no evidence that Plaintiff
 19 had committed a criminal act in his conversations with Defendant Dea. In
 20 rearresting Plaintiff and causing his detention Defendants Mossbrooks and Joy
 21 acted with malice and without probable cause for the purpose of causing Plaintiff
 22 humiliation, anxiety and other harms. On information and belief, these
 23 Defendants made material misstatements or omissions of fact to secure Plaintiff's
 24 rearrest in August 2014.

25 109. The United States engaged in these acts or omissions and/or condoned,
 26 permitted, authorized, and/or ratified the conduct of its employees or agents as
 27 alleged in this Amended Complaint.

1 110. As a result of the aforementioned acts or omissions, Plaintiff suffered
2 and continues to suffer severe emotional distress and the exacerbation of his pre-
3 existing PTSD symptoms. Plaintiff is entitled to compensatory damages for all of
4 the harms caused by Defendants' actions.

5
6
7 **TWELFTH CLAIM FOR RELIEF**

8 **(FTCA: MALICIOUS PROSECUTION AND ABUSE OF PROCESS)**

9 **(Against Defendant UNITED STATES)**

10 111. Plaintiff incorporates by reference each and every allegation contained
11 in paragraphs 1 through 112 as if set forth fully herein.

12 112. This count is based on the actions of Defendants Dea, Mossbrooks and
13 Joy as alleged above, acting within the scope of their employment. Defendants
14 Dea, Mossbrooks and Joy acted as complaining witnesses to have Plaintiff arrested
15 and detained without justification in April and August 2014. The allegations made
16 by these Defendants, acting with others as yet unknown, were made with malice
17 and without a basis in fact. These Defendants acted with the specific intent to have
18 Plaintiff arrested and charged with "terrorist threats" and in August 2014 the
19 additional charge of witness intimidation without any basis in fact. Defendants
20 acted for the purpose of causing Plaintiff extreme emotional distress and other
21 harms because he complained about the shoddy treatment he received at the VA.

22 113. There was no probable cause for Plaintiff's arrest or prosecution and
23 Defendants made material misstatements and omissions of fact in order to obtain
24 Plaintiff's arrest, detention and prosecution.

25 114. The Defendants knew there was no probable cause to arrest, detain or
26 prosecute Plaintiff. They acted with malice toward Plaintiff in order to "get" him,
27 as Defendant Mossbrooks threatened when Plaintiff left the courtroom after the
28

1 August 2014 preliminary hearing in which it was found that he had committed no
2 crime.

3 115. There was a favorable determination of all of the charges made against
4 Plaintiff.

5 116. The United States engaged in these acts or omissions and/or condoned,
6 permitted, authorized, and/or ratified the conduct of its employees or agents as
7 alleged in this Amended Complaint.

8 117. As a result of the aforementioned acts or omissions, Plaintiff suffered
9 and continues to suffer severe emotional distress and the exacerbation of his pre-
10 existing PTSD symptoms. Plaintiff is entitled to compensatory damages for all of
11 the harms caused by Defendants' actions.

12
13 **TWELFTH CLAIM FOR RELIEF**

14 **(FTCA: NEGLIGENT HIRING, SUPERVISION AND RETENTION)**

15 **(Against Defendant UNITED STATES)**

16 118. Plaintiff incorporates by reference each and every allegation contained
17 in paragraphs 1 through 119 as if set forth fully herein.

18 119. VA administrators, managers and other employees involved in the
19 hiring, supervision and retention of Defendants Mossbrooks and Joy, and acting
20 within the scope of their employment, knew or should have known that these
21 Defendants were unqualified to perform law enforcement functions for the VA and
22 that placing them and keeping them in such positions of trust and power would
23 inevitably lead them to abuse the rights of persons such as Plaintiff. In hiring and
24 retaining these Defendants these officials or employees violated a duty of care
25 owed to persons in Plaintiff's position. In particular, the VA personnel responsible
26 for hiring Defendant Mossbrooks should have known that he had a history of
27 abusing the rights of persons in prior law enforcement positions and had failed to
28 abide by constraints on his authority in those prior positions.

1 D. The award of punitive and exemplary damages against all individual
2 Defendants sued in their individual capacities in an amount to be proven at trial;

3 E. The award of statutory and compensatory damages under the FTCA
4 for the claims asserted against the United States.

5 F. The award of any and all other damages allowed by law according to
6 proof to be determined at time of trial in this matter;

7 G. Injunctive and declaratory relief against Defendant Shulkin adequate to
8 ensure that the VA's policies and practices and the safeguards of the U.S.
9 Constitution are followed at the VALB.

10 H. The award of costs of suit and reasonable attorneys' fees pursuant to
11 the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(a); the Rehabilitation Act
12 of 1973, 29 U.S.C. § 794a; the Privacy Act of 1974, 5 U.S.C. § 552a, and
13 California Civil Code §52.1.

14 I. The award of such other relief as the court deems just and proper.
15

16 Dated: March 8, 2017

17 SCHONBRUN SEPLOW
18 HARRIS & HOFFMAN, LLP

19
20 By: s/ Catherine Sweetser
21 Paul Hoffman
22 Catherine Sweetser
23 Attorneys for Plaintiff
24 Nolan Lewis
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiffs hereby respectfully demand that a trial by jury be conducted with respect to all issues presented herein.

Dated: March 8, 2017

SCHONBRUN SEPLOW
HARRIS & HOFFMAN, LLP

By: s/ Catherine Sweetser

Paul Hoffman
Catherine Sweetser
Attorneys for Plaintiff
Nolan Lewis